

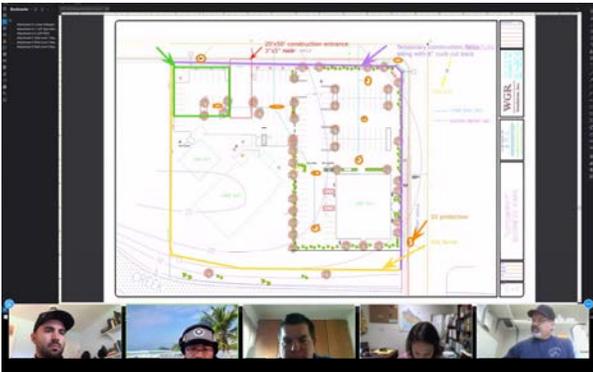


The Monthly Dirt
 a monthly newsletter on the California Construction General Permit
 by WGR Southwest, Inc.

No one anticipated what this year would bring when the ball fell in Times Square last New Year's Eve. Although it has only been less than five months, it seems so long ago and it seems that the world has completely changed. And it has in many ways. But as all of us are trying to determine what is the "new normal", we are finding that life must go on. In the storm water world, that means SWPPPs need to be written, NOIs and NOTs submitted, and construction sites inspected by QSPs. In this edition of *The Monthly Dirt* we will look at how COVID-19 has changed the way we implement the Construction General Permit. In some ways—nothing has changed. But, in other ways, everything is changing. We may never look at life quite the same.

ONLINE QSP/QSD TRAINING In April, the Construction General Permit Training Team (CGPTT) authorized the California Stormwater Quality Association (CASQA) to conduct a limited-time-only pilot test of presenting the QSP/QSD class through a virtual online format. To qualify to deliver the training online, interested Trainers of Record (ToRs) had to submit a Statement of Qualifications and a proposed technical approach to CASQA. WGR's John Teravskis was one of nine ToRs chosen across the State to hold the online training only during the pilot testing period. WGR used its [FORGE Training Website](#) and the [Zoom video conferencing](#) tool to host the class. The CGPTT had limited the pilot classes to only 20 students. With this unique, and perhaps only opportunity, to obtain this training online, many people and organizations jumped at the opportunity, filling the class within a few days of its opening. While the class was not in-person, it was still a live class where the instructor and students could interact in real time via video, audio, and text messaging. WGR's version of the class incorporated many of the same features utilized during the in-person presentations, which include videos, photos, PowerPoint presentations, pop quizzes, and group discussion questions. "Of course we couldn't toss out candy bars to those correctly answering the pop-quiz questions and our participants had to fetch their own lunches instead of enjoying one of WGR's catered gourmet meals," said John, "but the learning experience seemed in many ways to be similar to the in-person class." On the morning of the second day, WGR usually does a practicum by breaking up the class into 4 or 5 small groups centered around different tables. Each group works together to prepare a SWPPP map for a fictional Risk Level 2 construction site using what they learned on the first day of training. "This is my favorite activity," remarked John, "because it not only provides a practical way to demonstrate what we learned the day before, but it also allows all of us, including me, to learn from each person's unique experiences. I didn't want to miss this activity because we were online. So WGR's talented tech team found a

way for us to do it online." Each person in the larger class was assigned to a smaller virtual breakout session, where they shared a map of the construction site on their video screens and using the drawing tools on Zoom they were able to annotate their selected BMPs onto the map. Zoom has a function that allows the annotated image to be saved, which was then used to present their work to the larger group when all of the small groups returned to the main session.



So the big question—"Is online training an effective way to teach the QSP/QSD material?" That was the question the CGPTT was trying to answer through this pilot program and it was the question we

were asking ourselves. So, we queried the participants and here are some of their responses:

"The online aspect was convenient and allowed me to fit it into my schedule, without having to commit to 3 days of traveling to a class somewhere. An in-person class would also be desirable, as I am still somewhat a novice to the video conferencing environment. I think the convenience of the online course has more appeal."

"I was pleasantly surprised with the effectiveness of the online format. I am typically a hands-on, in-person, kinetic type of learner, yet I was able to stay engaged during the learning modules."

"I thought last week went well. It took a little time for people to get accustomed to using Zoom and communicating over it, but it felt like, after 2 hours or so, I was back in a classroom."

But what about the exam results? The only way ToRs know about the passing rates is through what our students share with us. Although we have not heard back from everyone, those who have contacted us have all passed their online exam. "It was one of the strangest weeks I have ever experienced," commented John, "I spent the entire week with 20 plus people, but not with one single real person."

...found a way for us to do it online." Each person in the larger class was assigned to a smaller virtual breakout session, where they shared a map of the construction site on their video screens and using the drawing tools on Zoom they were able to annotate their selected BMPs onto the map. Zoom has a function that allows the annotated image to be saved, which was then used to present their work to the larger group when all of the small groups returned to the main session.

QSPS & COVID ON THE JOB SITE – There is so much information out there on COVID-19; some good and some, well, just mis-information, that it is difficult to not go into information overload. So, the following are a few facts that apply to QSPs/QSDs as we now understand them:

- Both the United States Environmental Protection Agency and the State Water Resources Control Board have said that compliance to regulations and permits continues to be required and is considered “essential”. Therefore, QSP inspections and QSD pre-SWPPP development site visits are considered allowable activities in California in accordance with the Governor’s Stay-at-Home Executive Order N-33-20. Attached to this newsletter are an excerpt of the Governor’s order and a message from the State Water Resources Control Board. If there is a specific Water Board order or requirement that cannot be timely met because it would be inconsistent with current governmental directives or guidelines related to COVID-19, the entity responsible for compliance with the Water Board order or requirement must notify the applicable Water Board immediately by email.
- CalOSHA is requiring California construction companies and other employers to update their Injury and Illness Prevention Programs (IIPPs) to protect employees from all worksite hazards, including infectious diseases. While this required update is not considered to be a new requirement, many IIPPs will certainly need to be updated to address and new health and safety threat. Employers of QSPs and QSDs, will also need to update their IIPP with appropriate safe work practices that address COVID-19. Attached to this email is the May 5, 2020, CalOSHA Safety and Health Guidance on COVID-19 Infection Prevention in Construction.
- The Federal government, for the most part, is allowing States to decide when to reopen business and discontinue stay-at-home orders. The State of California recently announced, that it is transitioning into Stage 2 of its stay-at-home order. However, the Governor stated that he is also allowing local County Health Departments to keep more stringent restrictions in place if they deem it necessary. What freedoms or restrictions you have at a particular construction site will largely depend upon in what County it is located. For example, at the time this article was written, the City and County of San Francisco are requiring face masks for all construction workers along with several other specific social-distancing measures.
- Trade organizations and unions are also advocating certain safety protocols be in place on construction projects. The [COVID-19 Safety First Zero Tolerance Campaign](#) has been endorsed by many construction unions and contractors across California. The campaign lists the **Top 10 Rules for Zero Tolerance Jobsite Safety Enforcement:**
 1. No congregating before or after the work shift;
 2. No multi-person commuting or riding in crew trucks without separation;
 3. No eating lunch or breaks sitting or standing next to each other;
 4. No sharing of food, beverages, iPads, cell phones or digital devices;
 5. No sharing of any PPE;
 6. No meetings or gatherings without social distance;
 7. No use of equipment or tools without prior disinfecting;
 8. No illnesses hidden on the job because you can’t miss work;
 9. No pushback, ridicule or complaining about others embracing social distancing or the wearing of masks on the job; and
 10. No compromises for friends or colleagues who don’t want to follow the required guidelines.

While protecting the environment is very important and water quality affects all of us, protecting one another is even more important. It is vitally important that QSPs, QSDs, and those with whom they work stay healthy and adequately protected, so that when they go home, their families are also protected. Whether this virus persists or goes away, we need to take steps to make sure that everyone is safe on the job site. The job of the QSP and QSD is essential and should continue. But as we have learned in trying to control erosion, it is an iterative approach to which we must constantly adapt to new challenges. **MD**

TRAINING OPPORTUNITIES

Working from home? So are we, but this is a great time to do some training or to get your PDHs done. See what’s new on FORGE!



Scheduled 2020 Events (Converted to online events)

- May 25—31: PDU Week—online
- June 25: BMP Roundup—online
- July: QSP/QSD Class—*pending approval by CASQA and the CGPTT, dates to be announced soon.*
- August 14: Kayak Tour of the Lower Mokelumne River Watershed—a virtual narrated tour
- Sept. 21—25: Storm Water Awareness Week—online
- October: QSP/QSD Class—*pending approval by CASQA and the CGPTT, dates to be announced soon.*
- November 12: BMP Roundup—online
- Dec. 10: Storm Water Sampling School—online

Many California Contractors Have Taken the Pledge—Have You?

Click on the link below to learn more about keeping your crews safe.

COVID-19 SAFETY FIRST

ZERO TOLERANCE CAMPAIGN

**Need a SWPPP or a QSP Inspector?
Call us for a free quote.**

Please contact us if you have any questions ...

The Monthly Dirt Newsletter Editor:

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Technical Questions about Environmental Compliance?

Call ...

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mlewis@wgr-sw.com, (209) 334-5363 ext. 116

Gray Martz, QSP/QSD, PG (Southern California)
jgmartz@wgr-sw.com, (562) 799-8510 ext. 1002

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SAFETY AND HEALTH GUIDANCE

COVID-19 Infection Prevention in Construction

May 5, 2020

California employers are required to establish and implement an Injury and Illness Prevention Program (IIPP) to protect employees from all worksite hazards, including infectious diseases. This guidance does not impose any new legal obligations. It contains information for construction employers on ways to update their IIPPs to include information on employee training and preventing the spread of coronavirus (SARS-CoV-2), the virus that causes COVID-19, at construction sites. This is mandatory in most California workplaces since COVID-19 is widespread in the community.



Train Employees on COVID-19

Provide training in a form that is readily understandable by all employees on the following topics:

- Information related to COVID-19 from the Centers for Disease Control and Prevention (CDC) – check for updates frequently - including:
 - **What COVID-19 is and how it is spread.**
 - **Preventing the spread of COVID-19 if you are sick.**
 - **Symptoms of COVID-19 and when to seek medical attention.**
 - How an infected person can spread COVID-19 to others even when they don't feel sick.
- Additional helpful information is on **California's COVID-19 Response** webpage.
- The importance of frequent hand-washing with soap and water (or using hand sanitizer as a last resort where employees cannot feasibly get to a sink or hand washing station), including:
 - Following CDC guidelines to scrub for at least 20 seconds.
 - When employees arrive at work and before they leave work.
 - Before and after eating or using the toilet.
 - After close interaction with other persons.

- After contacting shared surfaces, equipment or tools.
- Before and after wearing masks or gloves.
- After blowing nose or sneezing.

NOTE: Hand sanitizers must have at least 60% alcohol. They are less effective than hand-washing in preventing the spread of COVID-19 but can be used as an interim measure if a hand-washing station is not immediately available.

- Maintaining more than six feet of separation with others and eliminating close contact with others (see Physical Distancing information on next page).
- Methods to avoid touching eyes, nose and mouth.
- The use of cloth face coverings, including:
 - Cloth face coverings are not personal protective equipment (PPE) and do not protect the person wearing the face covering.
 - **CDC has issued guidelines** that everyone should **use cloth face coverings** when around other persons. Employers should provide these coverings for their employees or at least encourage them to use their own.
 - Cloth face coverings can help protect people near the wearer, but do not replace the need for physical distancing and frequent hand washing.

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- Employees should wash or sanitize hands before and after using or adjusting face coverings.
- Face coverings should be washed after each shift and should be discarded if they no longer cover the nose and mouth, have stretched out or damaged ties or straps, cannot stay on the face, or have holes or tears.
- Coughing and sneezing etiquette, including covering a cough or sneeze with a tissue or a sleeve instead of a hand.
- Safely using cleaners and disinfectants, which includes:
 - The hazards of the cleaners and disinfectants used at the worksite.
 - Wearing personal protective equipment (such as gloves).
 - Ensuring cleaners and disinfectants are used in a manner that does not endanger employees.
- The importance of not coming to work if they have a frequent cough, fever, difficulty breathing, chills, muscle pain, headache, sore throat, or recent loss of taste or smell, or if they or someone they live with has been diagnosed with COVID-19.
- To seek medical attention if the symptoms become severe including persistent pain or pressure in the chest, confusion, or bluish lips or face. Updates and further details are available on [CDC's webpage](#).
- Use repeated safety stand-downs or toolbox/tailgates – while maintaining physical distancing - to re-emphasize the training.
- Designate a site-specific COVID-19 officer at every job site to observe and ensure site workers are implementing what they have been trained to do.

Increase Cleaning and Disinfection

Establish and implement the following procedures to help prevent the spread of COVID-19:

- Make hand-washing stations more readily available and encourage their use.
- Employers should change productivity expectations to allow extra time for employees to wash their hands thoroughly and frequently.
- Establish procedures to routinely clean and disinfect commonly touched surfaces and objects

(e.g., door handles, steering wheels, touch screens, mobile equipment controls, carts, shared power tools) throughout the workday, including:

- Using disinfectants that are **EPA-approved** for use against the virus that causes COVID-19.
- Providing EPA-registered disposable wipes for employees to wipe down commonly used surfaces before and after use.
- Following the manufacturer's instructions for all cleaning and disinfection products (e.g., safety requirements, protective equipment, proper dilution, contact time).
- Following safe work practices such as never mixing products together and using adequate ventilation.
- Cleaning visibly dirty surfaces first before disinfection. Disinfectants are less effective if used on soiled surfaces.
- Ensuring there are adequate supplies to support cleaning and disinfection practices, including cleaning products and tools and chemical resistant gloves. Make sure disinfectants are available to workers throughout the worksite.
- Cleaning and disinfecting vehicles between shifts and between workers.

Increase Physical Distancing

Physical distancing, also referred to as social distancing, is an infection control measure that can stop or slow down the spread of an infectious disease by limiting contact between people. Use the following distancing measures:

- Practice physical distancing at all times, including during work, breaks and in vehicles.
- Plan for office staff to have the ability to work from home.
- Stagger break and lunch times and spread out where employees spend their breaks by providing additional seating and shade areas.
- Limit crew size by staggering or increasing the number of work shifts.
- Maintain separation of six feet or more during work:
 - Limit the number of employees gathered at the start of a shift, in break areas or during trainings and other meetings to allow employees to spread out.

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- Limit the number of personnel riding construction passenger elevators at one time.
- Ensure employees allow for at least 6 feet of clearance between each other when lining up for the lunch truck and restrooms.
- Hold meetings electronically rather than in person whenever possible.
- Perform job interviews and orientations over the phone or using video conferencing.
- Identify choke points where workers are forced to stand together (e.g. hallways, hoists, buses) and control them.
- Provide additional seating and shade structures.
- If employees are dispatched from a hiring hall, encourage the hiring hall to implement physical distancing measures, such as using additional locations for dispatch.
- Limit interaction with other contractors.
 - Where possible, limit the number of trades in the same area at the same time.
 - Maintain distance during interactions and deliveries.
- Encourage employees to avoid large gatherings and practice physical distancing during non-work hours.
- Create specific instructions for deliveries to your worksites.
 - Establish a drop-off location and all the procedures to be used at the drop-off point.
 - Create signage to easily identify drop-off points. Include contact information on the signs to assist with questions leading up to delivery and upon arrival.
 - Create procedures to disinfect deliveries, such as wiping down boxes and delivered items.
- Provide alternative methods to reduce the spread of infection when physical distancing is not possible. Engineering controls such as physical barriers between workers and face coverings like bandanas, scarfs, buffs, neck gaiters or homemade masks can help reduce community spread of the virus.

- In addition to physical distancing, provide face coverings or encourage employees to use their own face covers. Ensure they are used in accordance with CDC guidelines.

Ensure Good Hygiene Practices

Ensure toilets and hand-washing facilities are readily accessible to all employees at all times.

Employers should adjust productivity expectations to allow extra time for employees to thoroughly and frequently wash their hands.

- Restrooms must be clean and sanitary.
- Handwashing facilities must be located at or near the restrooms.
- Soap or other suitable cleansing agent and single-use towels must be provided.
- Additional handwashing supplies should be placed as close to work areas and break areas as possible to allow for frequent handwashing.
- Encourage more frequent hand-washing.
- Encourage more thorough hand-washing. Hands should be washed with soap and water for at least 20 seconds.
- For delivery drivers, normally accessible restrooms on routes (e.g., restaurants, coffee shops) may be closed. Employers should provide employees alternative restroom locations and allow time for employees to use them.
- If employees have limited access to hand-washing or hand sanitizing, employees as a last resort can use disposable gloves to limit hand contact with potentially contaminated surfaces. Employers should encourage employees to change gloves frequently and before touching their face, smoking, eating or using the restroom. In addition, provide an adequate supply of gloves and make them readily available. Employees should wash or sanitize hands as soon as possible after removing gloves.

At this time, health experts do not recommend the use of respirators by the general public for protection against COVID-19. However, if available, employers must provide them to workers in the construction industry when needed to protect against other respiratory hazards.

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- Provide hand sanitizer throughout worksites and to delivery drivers for times when access to soap and water may be limited.
- If respirators and other PPE is worn to protect against other hazards at work, hands should be washed before putting on PPE and after taking it off. Reusable PPE should be cleaned and sanitized per manufacturers' instructions.

Implement Safe Work Practices

- Limit the sharing of tools as much as possible. If tools must be shared try to group them to be used by people who reside together or travel to work together.
- If fans or other means of ventilation are used on the job, place them to avoid blowing air from one worker or group of workers to another.
- Encourage workers to drive to worksites or parking areas by themselves. They should avoid having passengers or carpooling together unless they are already sheltering in place together. If carpooling cannot be avoided riders should sit as far apart as possible, wear face coverings and wash hands after the trip.
- Discourage shaking hands.
- Discourage the sharing of food and water. Provide single use bottles rather than using shared water stations or dispensers.

What to do with Workers Who Might Be Sick with COVID-19

- Immediately send employees with acute respiratory illness symptoms home or to medical care as needed.
- Actively encourage sick employees to stay home.
- Ensure employees who are out ill with fever or acute respiratory symptoms do not return to work until both of the following occur:
 - At least three full days pass with no fever (without the use of fever-reducing medications) and improvement in respiratory symptoms.
 - At least seven full days pass since symptoms first appeared.
- Ensure employees who return to work following an illness promptly report any recurrence of symptoms.
- Employees who are well but who have a sick

family member at home with COVID-19 should notify their supervisor and follow [CDC-recommended precautions](#).

- Encourage sick workers to stay home by implementing work policies that do not penalize workers for missing work because they have been diagnosed with COVID-19. Consider paid sick leave benefits to help prevent the spread among workers who might otherwise work out of economic necessity. Educate eligible employees on other benefits they can access if symptoms, illness or caring for an ill family member prevents them from working.
- The [Families First Coronavirus Response Act](#) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.
- If someone goes home because they are sick, the area where the person worked and the tools and equipment they used should be disinfected prior to use by others.
- Establish procedures to notify local health officials upon learning that someone has a COVID-19 infection. These officials will help employers determine a course of action.
- Employers can implement health screening programs to ensure that employees showing up to work are healthy. Employers may choose to prohibit employees with a high temperature (e.g., above 100.4 degrees F) from entering the worksite. Train employees on self-screening before they come to work. If conducting workplace screening, provide employees performing screening with appropriate personal protective equipment. In light of personal protective equipment shortages, use gloves, eye protection and a face covering. Have screened employees wear a face covering or cover their nose and mouth with cloth or other material during screening. If possible, use touchless thermometers. Disinfect contact-thermometers between employees. Ensure screeners maximize their distance from the employee being screened.
- Immediately send employees with acute respiratory illness symptoms home or to medical care as needed. Establish procedures to notify local health officials upon learning that someone has a COVID-19 infection. These officials will help employers determine a course of action.

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Additional COVID-19 Resources for Construction

- **California Coronavirus (COVID-19) Response**
- California Division of Occupational Safety and Health. **Cal/OSHA Interim Guidelines for General Industry on 2019 Novel Coronavirus Disease (COVID-19)**
 - **Cal/OSHA Injury and Illness Prevention Program**
 - **Log 300 recordkeeping requirements**
 - Reporting Work-Connected Injuries - **Section 342**
- California Department of Public Health. **Face Coverings Guidance**
- California Labor and Workforce Development Agency. **Coronavirus 2019 (COVID-19) Resources for Employers and Workers**
- Centers for Disease Control and Prevention. **Coronavirus Disease (COVID-19)**
 - Centers for Disease Control and Prevention. Coronavirus Disease (COVID-19): **How It Spreads**
 - Centers for Disease Control and Prevention. Coronavirus Disease (COVID-19): **Interim Guidance for Businesses and Employers**
 - Centers for Disease Control and Prevention. Coronavirus Disease (COVID-19): **Recommendation Regarding the Use of Cloth Face Coverings**
 - Centers for Disease Control and Prevention. Coronavirus Disease (COVID-19): **Steps to help prevent the spread of COVID-19 if you are sick**
 - Centers for Disease Control and Prevention. Coronavirus Disease (COVID-19): **Symptoms**
 - Centers for Disease Control and Prevention. Coronavirus Disease. **Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings (Interim Guidance)**
 - Centers for Disease Control and Prevention. Coronavirus Disease (COVID-19): **Cleaning and Disinfecting Your Facility**
- Federal OSHA: **COVID-19**
- Los Angeles County: **COVID-19: What you need to know about cloth face coverings**
- New York Times: **How to Stop Touching Your Face**
- Ohio Department of Health. COVID-19 Information for Businesses and Employers: **Screening Employees for COVID-19**
- The Center for Construction Research and Training (CPWR): COVID-19 Resources (**English**), (**Spanish**)
- U.S. Environmental Protection Agency. **Disinfectants for Use Against SARS-CoV-2** (the virus that causes COVID-19)
- U.S. Department of Labor. **Families First Coronavirus Response Act: Employee Paid Leave Rights**





This is a message from the State Water Resources Control Board

Updated as of March 20, 2020

Compliance with Water Board Requirements During the Coronavirus 2019 (COVID-19) Emergency

The State Water Resources Control Board and the nine California Regional Water Quality Control Boards (the Water Boards) are continuing their efforts to protect public health, safety, and the environment consistent with all federal, state, and local public health directives and guidelines related to COVID-19.

Please be aware that timely compliance by the regulated community with all Water Board orders and other requirements (including regulations, permits, contractual obligations, primacy delegations, and funding conditions) is generally considered to be an essential function during the COVID-19 response. As a result, the Water Boards consider compliance with board-established orders and other requirements to be within the essential activities, essential governmental functions, or comparable exceptions to shelter-in-place directives provided by local public health officials.

If there is a specific Water Board order or requirement that cannot be timely met because it would be inconsistent with current governmental directives or guidelines related to COVID-19, the entity responsible for compliance with the Water Board order or requirement must notify the applicable Water Board immediately. The notification shall be via electronic mail to the applicable Water Board using the appropriate email address identified below, and shall include:

- the specific Water Board order, regulation, permit, or other requirement that cannot be timely met,
- the inconsistent COVID-19 directive or guideline,
- an explanation of why the responsible entity cannot timely meet the Water Board order or requirement, and
- any action that the entity will take in lieu of complying with the specific Water Board order or requirement.

Water Board staff will do their best to respond within 24/48 hours.

Please note that more specific directions for certain types of Water Board orders and other requirements may also be provided.

Contacts for the Water Boards

State Water Board – Stormwater – stormwater@waterboards.ca.gov

North Coast Water Board – r1_stormwater@waterboards.ca.gov

San Francisco Bay Water Board – r2stormwater@waterboards.ca.gov

Central Coast Water Board – r3_stormwater@waterboards.ca.gov

Los Angeles Water Board – r4_stormwater@waterboards.ca.gov

Central Valley Water Board (Redding) – r5r_stormwater@waterboards.ca.gov

Central Valley Water Board (Sacramento)

– r5s_stormwater@waterboards.ca.gov

Central Valley Water Board (Fresno) – r5f_stormwater@waterboards.ca.gov

Lahontan Water Board (South Lake Tahoe)

– r6a_stormwater@waterboards.ca.gov

Lahontan Water Board (Victorville) – r6b_stormwater@waterboards.ca.gov

Colorado River Basin Water Board – r7_stormwater@waterboards.ca.gov

Santa Ana Water Board – r8_stormwater@waterboards.ca.gov

San Diego Water Board – r9_stormwater@waterboards.ca.gov

On March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing all residents immediately to heed current State public health directives to stay home, except as needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect health and well-being of all Californians.

In accordance with this order, the State Public Health Officer has designated the following list of “Essential Critical Infrastructure Workers” to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

HEALTHCARE / PUBLIC HEALTH

Sector Profile

The Healthcare and Public Health (HPH) Sector is large, diverse, and open, spanning both the public and private sectors. It includes publicly accessible healthcare facilities, research centers, suppliers, manufacturers, and other physical assets and vast, complex public-private information technology systems required for care delivery and to support the rapid, secure transmission and storage of large amounts of HPH data.

Essential Workforce

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response.
- Health care providers and caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists).
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.).
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric, Residential, Rural Health Clinics and Federally Qualified Health Centers, cannabis retailers).
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, [personal care/hygiene products](#), and tissue and paper towel products.

information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS

Essential Workforce

- Critical government workers, as defined by the employer and consistent with Continuity of Operations Plans and Continuity of Government plans.
- County workers responsible for determining eligibility for safety net benefits
- The Courts, consistent with [guidance](#) released by the California Chief Justice
- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Workers who are critical to facilitating trade in support of the national, state, and local emergency response supply chain
- Workers supporting public and private childcare establishments, pre-K establishments, K-12 schools, colleges, and universities for purposes of distance learning, provision of school meals, or care and supervision of minors to support essential workforce across all sectors

- Workers and instructors supporting academies and training facilities and courses for the purpose of graduating students and cadets that comprise the essential workforce for all identified critical sectors
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures, including measures to protect homeless populations.
- Construction **Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)**
- **Workers** such as plumbers, electricians, exterminators, and other service providers who provide services **that are necessary to maintaining the** safety, sanitation, **construction material sources,** and **essential operation of construction sites and construction projects** (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste)
- Commercial Retail Stores, that supply essential sectors, including convenience stores, pet supply stores, auto supplies and repair, hardware and home improvement, and home appliance retailers
- Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around social distancing.
- Workers critical to operating Rental Car companies that facilitate continuity of operations for essential workforces, and other essential travel
- Workers that provide or determine eligibility for food, shelter, in-home supportive services, child welfare, adult protective services and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals (including family members)
- **Professional services,** such as legal or accounting services, **when necessary to assist in compliance with legally mandated activities and critical sector services**
- Faith based services that are provided through streaming or other technology
- Laundromats and laundry services
- **Workers at animal care facilities that provide food, shelter, veterinary and/or routine care and other necessities of life for animals.**

CRITICAL MANUFACTURING

Sector Profile

The Critical Manufacturing Sector identifies several industries to serve as the core of the sector: Primary Metals Manufacturing, Machinery Manufacturing, Electrical Equipment, Appliance, and Component Manufacturing, Transportation Equipment Manufacturing Products made by these manufacturing industries are essential to many other critical infrastructure sectors.

Essential Workforce



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

March 26, 2020

MEMORANDUM

SUBJECT: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

FROM: Susan Parker Bodine *Susan Parker Bodine*

TO: All Governmental and Private Sector Partners

As all of us at the U.S. Environmental Protection Agency adjust to the evolving COVID-19 pandemic, we are first and foremost mindful of the health and safety of the public, as well as our staff, and those of Federal Agencies, State and Local Governments, Tribes, Regulated Entities, Contractors, and Non-governmental Organizations. The agency must take these important considerations into account as we all continue our work to protect human health and the environment. Accordingly, we are announcing the following temporary policy regarding EPA enforcement of environmental legal obligations during this time.

The EPA will exercise the enforcement discretion specified below for noncompliance covered by this temporary policy and resulting from the COVID-19 pandemic, if regulated entities take the steps applicable to their situations, as set forth in this policy. For noncompliance that occurs during the period of time that this temporary policy is in effect, and that results from the COVID-19 pandemic, this policy will apply to such noncompliance in lieu of an otherwise applicable EPA enforcement response policy.

APPLICABILITY

This policy will apply retroactively beginning on March 13, 2020. Authorized states or tribes may take a different approach under their own authorities. The EPA will undertake to coordinate with other federal agencies in situations where the EPA shares jurisdiction over a regulated entity's environmental compliance obligations.

The EPA will assess the continued need for and scope of this temporary policy on a regular basis and will update it if the EPA determines modifications are necessary. In order to provide fair and sufficient notice to the public, the EPA will post a notification here <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>, at least seven days prior to terminating this temporary policy.

The EPA will apply this policy to actions or omissions that occur while this policy is in effect even after the policy terminates.

SCOPE

At the EPA, we are cognizant of potential worker shortages due to the COVID-19 pandemic as well as

the travel and social distancing restrictions imposed by both governments and corporations or recommended by the Centers for Disease Control and Prevention to limit the spread of COVID-19. The consequences of the pandemic may affect facility operations and the availability of key staff and contractors and the ability of laboratories to timely analyze samples and provide results. As a result, there may be constraints on the ability of a facility or laboratory to carry out certain activities required by our federal environmental permits, regulations, and statutes. These consequences may affect reporting obligations and milestones set forth in settlements and consent decrees. Finally, these consequences may affect the ability of an operation to meet enforceable limitations on air emissions and water discharges, requirements for the management of hazardous waste, or requirements to ensure and provide safe drinking water. These are very distinct situations that the EPA plans to manage differently, as described below.

The enforcement discretion described in this temporary policy do not apply to any criminal violations or conditions of probation in criminal sentences. Appropriate consideration of potential criminal liability is discussed separately, below.

This policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments. Such matters will be addressed in a separate communication.

This policy does not apply to imports. We also are especially concerned about pesticide products entering the United States, or produced, manufactured, distributed in the United States, that claim to address COVID-19 impacts. The agency expects to focus on ensuring compliance with requirements applicable to these products to ensure protection of public health. Information relating to FIFRA import requirements can be found here: <https://www.epa.gov/compliance/importing-and-exporting-pesticides-and-devices>. This website will be updated to provide information on how to submit information via email, as may be necessary during the COVID-19 pandemic.

Finally, we realize that the general statements contained in this policy may not address every potential civil violation that may arise as a result of COVID-19. As such, the EPA may provide additional enforcement guidance applicable to specific programs on an ongoing basis and the EPA's self-disclosure program remains available.¹

ENFORCEMENT DISCRETION

I. Civil Violations

A. General conditions

All enforcement discretion set forth in this temporary policy is conditioned on the following.

1. Entities should make every effort to comply with their environmental compliance obligations.

¹ Regulated entities who voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of potential violations may be eligible for a reduction or elimination of any civil penalties that otherwise might apply. Most violations can be disclosed and processed via the EPA's automated online "eDisclosure" system (*see* <https://www.epa.gov/compliance/epas-edisclosure>). To learn more about the EPA's violation disclosure policies, including conditions for eligibility, please review the EPA's Audit Policy website at <https://www.epa.gov/compliance/epas-audit-policy>. Many states also offer incentives for self-policing; please check with the appropriate state agency for more information.

2. If compliance is not reasonably practicable, facilities with environmental compliance obligations should:
 - a. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
 - b. Identify the specific nature and dates of the noncompliance;
 - c. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
 - d. Return to compliance as soon as possible; and
 - e. Document the information, action, or condition specified in a. through d.

B. Routine compliance monitoring and reporting by regulated entities

The consequences of the pandemic may constrain the ability of regulated entities to perform routine compliance monitoring,² integrity testing,³ sampling,⁴ laboratory analysis,⁵ training,⁶ and reporting or certification.⁷

Entities should use existing procedures to report noncompliance with such routine activities, such as pursuant to an applicable permit, regulation or statute. If no such procedure is applicable, or if reporting is not reasonably practicable due to COVID-19, regulated entities should maintain this information internally and make it available to the EPA or an authorized state or tribe upon request. In general, the EPA does not expect to seek penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request.

After this policy is no longer in effect, the EPA expects full compliance going forward. In general, absent exigent circumstances, the EPA does not plan to ask facilities to “catch-up” with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months. For other monitoring or reports, such as those required on a bi-annual or annual basis, when this policy is no longer in effect, the EPA expects facilities to take reasonable measures to resume compliance activities as soon as possible, including conducting late monitoring or submitting late reports. In some programs, there are sections or codes in the reporting form in which a facility may indicate why it has not conducted the required sampling and monitoring, and the EPA encourages facilities to include such information when submitting any late reports.

Many training classes are offered on-line and such on-line training generally should not be affected by

² If affected by COVID-19, this category may include, for example, CEMS and stack tests, relative accuracy test audits, LDAR monitoring, fence line monitoring, RICE readings and monitoring, tank and piping inspections, assessments, or stormwater inspections.

³ If affected by COVID-19, this category may, for example, include tank integrity testing (e.g., API 653) for compliance with certain “good air pollution control practices.”

⁴ If affected by COVID-19, this category may include, for example, effluent sampling and testing, as well as cooling tower sampling.

⁵ If affected by COVID-19, this category may include, for example, laboratory holding times and turn-around times.

⁶ If affected by COVID-19, this category may include, for example, SPCC training, hazardous waste trainings, CAA section 129 renewals, and other annual re-certifications.

⁷ If affected by COVID-19, this category may include, for example, reports and certifications associated with delayed activities described above, and late reports under permit or other regulatory obligations, including TRI and greenhouse gas inventory reporting.

travel and social distancing constraints. If practicable, sectors mandated to function with certified operators should maintain normal certification and training practices. If not practicable due to the COVID-19 pandemic, the EPA believes that it is more important to keep experienced, trained operators on the job, even if a training or certification is missed.

If a submission to the EPA requires a “wet” signature of a responsible official, the EPA will accept a digital or other electronic signature. The mere inability to obtain a “wet” signature will not be considered a justification for failure to make a paper submission or certification. We strongly encourage the regulated community use the EPA’s approved electronic reporting mechanisms. For enforcement purposes, the EPA also will accept emailed submissions even if a paper original is required.

C. Settlement agreement and consent decree reporting obligations and milestones

1. With respect to **EPA administrative settlement agreement** reporting obligations and milestones, if, as a result of COVID-19, parties to such settlement agreements anticipate missing enforceable milestones set forth in those documents, parties should utilize the notice procedures set forth in the agreement, including notification of a force majeure, as applicable. For EPA administrative settlement agreements, the EPA intends to treat routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and associated reporting or certification obligations in the manner described above and will generally not seek stipulated or other penalties for noncompliance with such obligations. The notification should provide the information required by the agreement, which typically will include steps taken to minimize the effects and duration of any noncompliance caused by COVID-19, as well as the information specified under subpart A, above. EPA staff will review these notifications and may contact a party to seek adjustments to a proposed plan of action, pursuant to the agreement.
2. With respect to **consent decrees entered into with the EPA and the U.S. Department of Justice**, these documents are agreements and court orders. EPA staff will coordinate with DOJ to exercise enforcement discretion with regard to stipulated penalties for the routine compliance obligations described in paragraph 1 and will also consult with any co-plaintiffs to seek agreement to this approach. Courts retain jurisdiction over consent decrees and may exercise their own authority. Parties should utilize the notice procedures set forth in the consent decree, including notification of a force majeure, as applicable, with respect to any noncompliance alleged to be caused by COVID-19.
3. Parties should proceed as proposed in their notice to the EPA (and to DOJ for consent decrees) unless and until contacted by the agency (if an EPA administrative settlement) or DOJ (if a judicial consent decree).

D. Facility operations

The EPA expects all regulated entities to continue to manage and operate their facilities in a manner that is safe and that protects the public and the environment.

1. Facilities should contact the appropriate implementing authority (EPA region, authorized state, or tribe) if **facility operations impacted by the COVID-19 pandemic may create an acute risk or an imminent threat to human health or the environment**. Even in authorized programs, the EPA strongly encourages facilities, states, and tribes to consult with their EPA regional office on acute risks and imminent threats. If an entity contacts the EPA due to noncompliance that could result in an acute risk or an imminent threat to human health or the environment, the EPA will act as follows.

- a. The EPA's first step will be to consult with the state or tribe, if an authorized program, to discuss measures to minimize or prevent the acute or imminent threat to health or the environment from the COVID-19-caused noncompliance. State or tribal permits or regulations may have provisions that address the situation and result in a return to compliance. Consultation with authorized states or tribes will proceed in accordance with the July 11, 2019 memorandum on [*Enhancing Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance Work*](#).
 - b. In cases where the EPA implements the program directly:
 - i. The EPA regional office will evaluate whether an applicable permit, statutory, or regulatory provision addresses the situation. The EPA's Office of Enforcement and Compliance Assurance (OECA) will work with program offices on nationwide issues that may arise.
 - ii. If there is no permit/regulatory provision that addresses the situation, the EPA will work with the facility to minimize or prevent the acute or imminent threat to health or the environment from the COVID-19-caused noncompliance and obtain a return to compliance as soon as possible.
 - iii. The EPA will inform the relevant state or tribe of any acute threats and actions taken in response to the noncompliance.
 - iv. The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether an enforcement response is appropriate.
2. If a facility suffers from **failure of air emission control or wastewater or waste treatment systems or other facility equipment** that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases, the facility should notify the implementing authority (EPA regional office or authorized state or tribe) as quickly as possible. The notification also should include information on the pollutants emitted, discharged, discarded, or released; the comparison between the expected emissions or discharges, disposal, or release and any applicable limitation(s); and the expected duration and timing of the exceedance(s) or releases. The EPA will consult with authorized states or tribes, as applicable, in accordance with the July 11, 2019 memorandum on [*Enhancing Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance Work*](#) to determine the appropriate response. Where the EPA implements the program directly, the EPA will evaluate whether the risk posed by the exceedance, disposal, or release is acute or may create an imminent threat to human health or the environment and will follow the steps set forth under paragraph 1.b. above.
 3. If facility operations result in **noncompliance are not already addressed by the EPA above**, regulated entities should take the steps identified under Part I.A. The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether enforcement response is appropriate.
 4. If a facility is a **generator of hazardous waste** and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer the waste off-site within the time periods required under RCRA to maintain its generator status, the facility should continue to properly label and store such waste and take the steps identified under Part I.A., above. If these steps are met, as an exercise of enforcement discretion, the EPA will treat such entities to be hazardous waste generators, and not treatment, storage and disposal facilities. In addition, as an exercise of enforcement discretion, the EPA will treat Very Small Quantity Generators and Small Quantity Generators as

retaining that status, even if the amount of hazardous waste stored on site exceeds a regulatory volume threshold due to the generator's inability to arrange for shipping of hazardous waste off of the generator's site due to the COVID-19 pandemic.

5. If a facility is an **animal feeding operation**, and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer animals off-site and, solely as a result of the pandemic, meets the regulatory definition of concentrated animal feeding operation (CAFO), as an exercise of enforcement discretion, the EPA will not treat such animal feeding operations as CAFOs (or will not treat small CAFOs as medium CAFOs, or medium CAFOs as large CAFOs). To receive this enforcement discretion an operation must take the steps identified under Part I.A, above.

E. Public water systems regulated under the Safe Drinking Water Act

Public water systems have a heightened responsibility to protect public health because unsafe drinking water can lead to serious illnesses and access to clean water for drinking and handwashing is critical during the COVID-19 pandemic. Accordingly, the EPA has heightened expectations for public water systems. The EPA expects operators of such systems to continue normal operations and maintenance as well as required sampling to ensure the safety of our drinking water supplies. The EPA expects laboratories performing analysis for water systems to continue to provide timely analysis of samples and results. States play the lead role on drinking water issues, but the EPA also has important drinking water enforcement and oversight responsibilities, including direct implementation responsibilities in some locations.

In the event of worker shortages in the water sector, the EPA will consider continued operation of drinking water systems to be the highest priority. In anticipation of worker shortage and laboratory capacity problems, the EPA considers the following tiers of compliance monitoring to assure the safety of our drinking water supplies and prioritize prevention of acute risks. Of highest priority is monitoring required under National Primary Drinking Water Regulations to protect against microbial pathogens. Additional priorities include nitrate/nitrite and Lead and Copper Rule monitoring followed by contaminants for which the system has been non-compliant. States may wish to adopt similar priorities.

The EPA is working closely with our federal partners, states, and other organizations to ensure resources and personnel are available to assist facilities facing staffing and contractor challenges during this period of COVID-19 response and the Office of Water plans to launch a website with this information. Accordingly, the EPA strongly encourages public water systems to consult with the state and EPA regional offices without delay if issues arise that prevent the normal delivery of safe drinking water and encourages states to continue to work closely with the EPA on measures to address the potential impacts of COVID-19. The EPA also encourages certified drinking water laboratories to consult with the state and the EPA if issues arise that prevent laboratories from conducting analyses of drinking water contaminants.

The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether any enforcement response is appropriate at public water systems acting in accordance with this subpart.

F. Critical infrastructure

In situations where a facility is essential critical infrastructure, the EPA may consider a more tailored short-term No Action Assurance, with conditions to protect the public, if the EPA determines it is in the

public interest. Such determinations are made by the OECA Assistant Administrator on a case-by-case basis. The EPA will consider essential the facilities that employ essential critical infrastructure workers as determined by guidance issued by the Cybersecurity and Infrastructure Security Agency.

II. State Oversight

The EPA will continue State Review Framework reviews, and other state program oversight, as practicable, taking into consideration priority work in response to COVID-19. Until such time as dictated by travel and social distancing restrictions, the EPA believes states should take into account the safety and health of their inspectors and facility personnel and use discretion when making decisions to conduct routine inspections, notwithstanding any applicable compliance monitoring strategy. The EPA will take the COVID-19 pandemic into consideration in any review of a state compliance and enforcement program, such as the State Review Framework.

III. EPA Actions

During the pendency of the current COVID-19 exigency, the EPA expects to focus its resources largely on situations that may create an acute risk or imminent threat to public health or the environment, to ensure protection against such risks or threats. All ongoing enforcement matters are continuing.

IV. Accidental Releases

Nothing in this temporary policy relieves any entity from the responsibility to prevent, respond to, or report accidental releases of oil, hazardous substances, hazardous chemicals, hazardous waste, and other pollutants, as required by federal law, or should be read as a willingness to exercise enforcement discretion in the wake of such a release.

V. Criminal Violations

The considerations described above apply to the vast majority of people and businesses who are making good faith efforts to comply with their obligations in this difficult time. Federal environmental statutes generally authorize criminal penalties for knowing conduct that violates the law. In screening cases to determine when to seek prosecutorial assistance from DOJ, the EPA will distinguish violations that facilities know are unavoidable as a result of COVID-19 restrictions from violations that are the result of an intentional disregard for the law. EPA's Criminal Investigative Division remains vigilant and is prepared to pursue violators who demonstrate a criminal *mens rea*.

This temporary policy makes EPA offices and the EPA's governmental and private sector partners, as well as the general public, aware of how the EPA intends to exercise its enforcement discretion with respect to certain compliance situations during the exigencies of the COVID-19 pandemic. This memorandum does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.